

Appeal from decision of the Montana State Office, Bureau of Land Management, dismissing protest against the validity of first-drawn application for oil and gas lease M 54559.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Departmental regulation 43 CFR 3102.2-6(b) (1981) required that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent was a corporation, it was not required to submit proof of the authority of the employee executing the application to act for the filing service.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant; Jeffrey M. Lee, Esq., Malibu, California, for Robert C. Van Kampen, appellee.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Stanley L. Slater appeals the April 22, 1982, decision of the Montana State Office, Bureau of Land Management (BLM), dismissing his protest against issuance of oil and gas lease M 54559 to Robert C. Van Kampen whose simultaneously filed oil and gas lease application was drawn with first priority for parcel MT 177 in the January 1982 drawing. Van Kampen's application was signed as follows: "G. Torbert [handwritten in ink], ASST. SEC. FEDERAL LEASE FILING CORP., AGENT FOR ROBERT C. VAN KAMPEN." The card provided a reference number for the agent's qualifications. It was not until February 16, 1982, that Federal Lease Filing Corporation (FLFC) filed a copy of its appointment of Gail Torbert in the reference file, although this appointment was dated January 5, 1982. Appellant contends that because Gail Torbert's appointment was not filed promptly, the reference file was not current so that the reference to the serial number on the application was invalid under 43 CFR

3102.2-1(c) (1981). ^{1/} That regulation permitted trustees, guardians, corporations, agents, and municipalities to file their statements of qualifications with only one BLM state office which would assign a serial number to the statement so that reference to the statement could be made in documents filed with other state offices. The last sentence of this regulation provided: "Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current." This regulation, however, did not specify what information a file must contain in order to be considered current, but it identified 43 CFR 3102.2-6 as the regulation concerning statements filed by agents.

[1] That regulation provided as follows:

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

^{1/} On Feb. 26, 1982, the Department published interim final regulations revising 43 CFR 3102 and effectively eliminating the requirement to file the statement of qualifications which is the subject of this appeal. 47 FR 8544 (Feb. 26, 1982). While the Board in certain circumstances may apply revised regulations to pending matters where it benefits the affected party (see James E. Strong, 45 IBLA 386 (1980)), it is not possible to do so in this case because of the intervening rights of appellant, the second priority applicant, coupled with the obligation to issue a noncompetitive lease only to the first-qualified applicant. 30 U.S.C. § 226(c) (1976); see Ballard E. Spencer, Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2 1067 (10 Cir. 1976). Accordingly, we must decide this appeal by applying the regulations in effect at the time appellant and Van Kampen filed their applications.

The requirements of subsection (a) did not apply since FLFC submitted a single copy of its service agreement as provided in subsection (b). 2/ In Tommy L. Alford, 71 IBLA 29 (1983), the Board observed that subsection (b) contains no requirement that a corporate filing service also file a list of employees authorized to sign offers on behalf of its clients. We held that where a filing service agent is a corporation, it is not required to submit proof of the authority of the employee executing the application to act for the filing service.

Although appellant is correct that a corporation may act only through authorized agents, we noted in Alford, supra at 34 n.4, that regardless of the fact that written evidence of the authorization of FLFC's employee to sign applications was not received by BLM until after the drawing, the employee had apparent authority to sign the application which is sufficient to bind the filing service in the absence of written authorization. Thus, FLFC's failure to file a copy of Torbert's appointment at the time of the drawing did not render its statement of qualifications "not current" within the meaning of 43 CFR 3102.2-1(c). Therefore, appellant has stated no basis for rejecting Van Kampen's offer, and BLM properly dismissed his protest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ Appellant does not allege that FLFC failed to submit timely the list of offerors or applicants participating under the agreement.